

App. No. 10/668,764  
Amendment Dated: April 17, 2006  
Reply to Office Action of October 17, 2005

### REMARKS/ARGUMENTS

For this continuation application, original claims 1-50 and 68-71 of the parent application were canceled, leaving claims 51-67 remaining in this application for further review. In furtherance of this amendment claims 65-67 have been canceled. Claims 51-64 remain pending. No new matter has been added.

#### **I. Obviousness-Type Double Patenting**

Claims 51-67 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-40 of co-pending Application No. 08/931,861, filed September 16, 1997, now U.S. Patent No 6,658,648. Claims 51-65 remain in this application for further review. Claims 66 and 67 are canceled. Attached hereto in the appendix is a timely filed terminal disclaimer that complies with the Code of Federal Regulations along with copies of the originally filed assignment documents. Accordingly, the double patenting rejection of claims 51-65 is obviated.

#### **II. Rejection of claims 51-65 under 35 U.S.C. § 103(a)**

Claims 51-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,889,999 issued to Breternitz et al. in view of U.S. Patent No. 5,721,719 issued to Elliott et al.

Independent claims 51 and 58 have been amended. In the Office Action, claims 66 and 67 were indicated as allowable by the Examiner. Claims 66 and 67 correspond to generating a filter using one of a frequency-domain analysis (claim 66) and a time-domain analysis (claim 67). Applicants agree with the Examiner that these limitations are not included in the cited prior

App. No. 10/668,764  
Amendment Dated: April 17, 2006  
Reply to Office Action of October 17, 2005

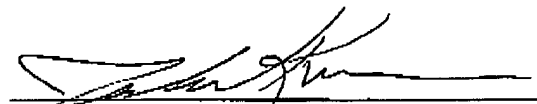
art of Breternitz et al. and Elliot et al. To further the claims for allowance, independent claims 51 and 58 have been amended to include the indicated allowable subject matter of claims 66 and 67. Since the independent claims now include the subject matter of allowable claims 66 and 67, as well as intervening claim 65, claims 65-67 have been canceled. Since the Examiner has deemed claim 66 and 67 to be allowable over Breternitz et al. and Elliot et al., amended independent claims 51 and 58 are allowable over the prior art for the same or similar reasons.

Claims 52-57 and 59-64 are dependent from amended claims 51 and 58 respectively. Since amended claims 51 and 58 are allowable over Breternitz et al. and Elliot et al. for at least the reasons provided above, claims 52-57 and 59-64 are also considered allowable.

In view of the foregoing amendments and remarks, all pending claims are believed to be allowable and the application is in condition for allowance. Therefore, a Notice of Allowance is respectfully requested. Should the Examiner have any further issues regarding this application, the Examiner is requested to contact the undersigned attorney for the applicant at the telephone number provided below.

Respectfully submitted,

MERCHANT & GOULD P.C.

  
Joshua W. Korver  
Registration No. 51,894  
Direct Dial: 206.342.6257

MERCHANT & GOULD P.C.  
P. O. Box 2903  
Minneapolis, Minnesota 55402-0903  
206.342.6200



# APPENDIX

ASSISTANT SECRETARY AND COMMISSIONER  
OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

MJP

JANUARY 07, 1998

SEED AND BERRY LLP  
MAURICE J. PIRIO  
6300 COLUMBIA CENTER  
701 FIFTH AVENUE  
SEATTLE, WA 98104-7092

PTAS

RECEIVED

JAN 7 1998

SEED &amp; BERRY LLP



\*100578045A\*

UNITED STATES PATENT AND TRADEMARK OFFICE  
NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

THE ENCLOSED DOCUMENT ~~HAS BEEN RECORDED~~ BY THE ASSIGNMENT DIVISION OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, NORTH TOWER BUILDING, SUITE 10C35, WASHINGTON, D.C. 20231.

RECORDATION DATE: 09/16/1997

REEL/FRAME: 8805/8662  
NUMBER OF PAGES: 5

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:  
DOUCEUR, JOHN R.

DOC DATE: 09/11/1997

ASSIGNOR:  
FITZGERALD, ROBERT P.

DOC DATE: 09/12/1997

ASSIGNOR:  
MILLER, JOHN W.

DOC DATE: 09/12/1997

ASSIGNEE:  
MICROSOFT CORPORATION  
ONE MICROSOFT WAY  
REDMOND, WASHINGTON 98052-6399SERIAL NUMBER: 08931861  
PATENT NUMBER:FILING DATE:  
ISSUE DATE:COPY TO CLIENT  
1/14/98 BY 1/2

04-17-06 02:15PM FROM-MERCHANT & GOULD P.C.

206-342-6201

T-878 P.015/021 F-021

8805/0662 PAGE 2

DIANE RUSSELE, PARALEGAL  
ASSIGNMENT DIVISION  
OFFICE OF PUBLIC RECORDS

MRD 9-16-97

100578045

.ed original document or copy thereof

To the Honorable Commissioner of Patents and Trademarks

## 1. Names of conveying parties:

- 1) JOHN R. DOUCEUR
- 2) ROBERT P. FITZGERALD
- 3) JOHN W. MILLER
- 4) \_\_\_\_\_
- 5) \_\_\_\_\_
- 6) \_\_\_\_\_

Additional names of conveying parties attached? ☐ Yes ☒ No

## 3. Nature of conveyance:

- ☒ Assignment ☐ Merger
- ☐ Security Agreement ☐ Change of Name
- ☐ Other \_\_\_\_\_

## Execution Dates:

- 1) SEPTEMBER 11, 1997 4) \_\_\_\_\_
- 2) SEPTEMBER 12, 1997 5) \_\_\_\_\_
- 3) SEPTEMBER 12, 1997 6) \_\_\_\_\_

## 2. Name and address of receiving party:

Name: MICROSOFT CORPORATION

Internal Address: \_\_\_\_\_

Street Address: ONE MICROSOFT WAYCity: REDMOND State: WAZip: 98052-6399Additional names & addresses attached? ☐ Yes ☒ No

## 4. Application number(s) or registration number(s):

If this document is being filed together with a new application,  
the execution date of the application is SEPTEMBER 16, 1997.

A. Patent Application No(s).

B. Patent No(s).

Additional numbers attached? ☐ Yes ☐ No

## 5. Name and address of party to whom correspondence concerning document should be mailed:

Name: SEED AND BERRY LLPInternal Address: MAURICE J. PIRIO6300 COLUMBIA CENTERStreet Address: 701 FIFTH AVENUECity: SEATTLE State: WA ZIP: 98104-7092

## 6. Total number of applications and patents involved.....

1

## 7. Total Fee (37 CFR 3.41): .....\$40

☒ Enclosed☐ Authorized to be charged to deposit account

## 8. Deposit account number:

19-1090

DO NOT USE THIS SPACE

## 9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

MAURICE J. PIRIO

Name of Person Signing

Maurice J. Pirio

Signature

9/16/97

Date

Total number of pages including cover sheet, attachments, and documents 5

## ASSIGNMENT

WHEREAS, we, John R. Douceur, Robert P. Fitzgerald, and John W. Miller (hereinafter referred to as ASSIGNORS), having post office addresses of 14711 Northeast 50<sup>th</sup> Place, #J-2, Bellevue, Washington 98007, 19923 Northeast Redmond Road, Redmond, Washington 98053, and 331 8<sup>th</sup> Avenue West, Kirkland, Washington 98033, respectively, are the joint inventors of an invention entitled "METHOD AND SYSTEM FOR CONTROLLING THE IMPROVING OF A PROGRAM LAYOUT," as described and claimed in the specification forming part of an application for United States letters patent executed herewith;

WHEREAS, Microsoft Corporation (hereinafter referred to as ASSIGNEE), a corporation of the State of Washington having a business address of One Microsoft Way, Redmond, Washington 98052-6399, is desirous of acquiring the entire right, title and interest in and to the invention and in and to any letters patent that may be granted therefor in the United States and in any and all foreign countries;

NOW, THEREFORE, in exchange for good and valuable consideration, the receipt of which is hereby acknowledged, ASSIGNORS hereby sell, assign and transfer unto said ASSIGNEE, the entire right, title and interest in and to said invention, said application and any and all letters patent which may be granted for said invention in the United States of America and its territorial possessions and in any and all foreign countries, and in any and all divisions, reissues and continuations thereof, including the right to file foreign applications directly in the name of ASSIGNEE and to claim priority rights deriving from said United States application to which said foreign applications are entitled by virtue of international convention, treaty or otherwise, said invention, application and all letters patent on said invention to be held and enjoyed by ASSIGNEE and its successors and assigns for their use and benefit and of their successors and assigns as fully and entirely as the same would have been held and enjoyed by ASSIGNORS had this assignment, transfer and sale not been made. ASSIGNORS hereby authorize and request the Commissioner of Patents and Trademarks to issue all letters patent on said invention to ASSIGNEE. ASSIGNORS agree to execute all instruments and documents required for the making and prosecution of applications for United States and foreign letters patent on said invention, for litigation regarding said letters patent, or for the purpose of protecting title to said invention or letters patent therefor.

9/11/97  
Date

John R. Douceur  
John R. Douceur

State of Washington )  
                                  ) ss.  
County of King )

I certify that I know or have satisfactory evidence that John R. Douceur is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.



Dated 9-11-97  
Signature of Linda Y. Johnson  
Notary Public  
Printed Name LINDA Y JOHNSON  
My appointment expires 3-13-2001



12 Sep - 97

Date

Robert P. Fitzgerald

Robert P. Fitzgerald

State of Washington )

) ss.

County of King )

I certify that I know or have satisfactory evidence that Robert P. Fitzgerald is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

Dated

9-12-97Signature of  
Notary PublicLinda Y. Johnson

Printed Name

LINDA Y JOHNSON

My appointment expires

3-13-2001

9-12-97  
Date

John W. Miller  
John W. Miller

State of Washington )  
                                  ) ss.  
County of King )

I certify that I know or have satisfactory evidence that John W. Miller is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

Dated 9-12-97

Signature of Linda Y. Johnson  
Notary Public

Printed Name LINDA Y JOHNSON

My appointment expires 3-13-2001



WPN/MS/661005/540/FORMS/ASSIGNMENT  
0